TESTIMONY BY THE HONORABLE JOHN NORTON MOORE
CHAIRMAN, NATIONAL SECURITY COUNCIL
INTERAGENCY TASK FORCE ON THE LAW OF THE SEA
BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE
SUBCOMMITTEE ON OCEANS AND INTERNATIONAL ENVIRONMENT
OCTOBER 31, 1975

Mr. Chairman:

I appreciate the opportunity to testify on behalf of the Administration in opposition to S.961, a bill which would unilaterally extend United States fisheries jurisdiction to 200 miles. There is general agreement that an extended 200-mile area of fisheries jurisdiction over coastal fish stocks is desirable for the protection of such stocks. The issue, however, is whether such an extension should be unilaterally imposed in violation of solemn treaty obligations of the United States or whether it should be achieved through international negotiations now underway. Few issues have presented a starker choice for the future of our national oceans policy. How we decide this issue may largely determine whether we move forward to cooperative solutions to oceans problems or precipitate a spiral of unilateral national claims leading to confrontation and conflict.

We have recently concluded a thorough evaluation of our interim fisheries policy and have determined strongly to oppose measures unilaterally extending our fisheries jurisdiction. Factors which were weighed in that determination include the following:

Approved For Release 2002/05/23 : CIA-RDP82S00697R000400090003-4

First, we are continuing to make progress toward a comprehensive Law of the Sea Treaty which will provide balanced protection for all U.S. oceans interests and particularly our fishery interests. The single negotiating text prepared at the Geneva session of the Conference provides for a 200-mile economic zone with coastal State preferential rights and management responsibility over coastal species within the zone and broad protection for our important anadromous stocks within and beyond the zone. These provisions when implemented will provide a sound basis for protecting coastal and anadromous species on a world-wide basis. With your permission I would like to submit for the record the relevant provisions of the single negotiating text dealing with the fisheries issues. Although we have been disappointed with the work schedule of the Law of the Sea Conference we believe that we are approaching the final sessions in this important and complex multilateral negotiation. Paradoxically, unilateral action to extend our fisheries jurisdiction could endanger the best opportunity we have had to achieve international recognition of the jurisdictional arrangements adequate for the protection of U.S. fishing interests on a world-wide basis.

Second, in the period between now and the conclusion of a Law of the Sea Treaty, efforts to ensure greater protection of fish stocks through unilateral action in violation of international law could well be seriously counterproductive. Such unilateral action by the U.S. will not be accepted by states fishing off our coasts and could result in a hardening of positions impairing our ability to protect such stocks. In contrast, efforts to ensure greater protection through negotiations are making substantial progress as the recent highly successful ICNAF agreement, discussed by Under Secretary Maw, illustrates.

Third, a unilateral extension of fisheries jurisdiction such as that of S.961 would be a major blow to our foreign relations and oceans interests. The serious costs of such action include:

-- Abandonment of a cardinal tenet of United States oceans policy - the avoidance of unilateral action contrary to international law. We have consistently protested such unilateral oceans claims by other nations. Such a major unilateral claim would undercut our ability to prevent unilateral

claims by others, harming important U.S. oceans interests. Such unilateral action could, for example, lead to claims which:

- are contrary to our security interests;
- endanger our navigational freedom to transport vital oil supplies. At current prices the value of petroleum imports by sea into the U.S. in 1976 will exceed $26 billion; or
- subject our oceanographic research vessels to the control of coastal nations.

-- Enforcement of a unilateral 200-mile United States fisheries claim against the Soviet Union and other nations fishing off our coasts could pose a risk of confrontation or retaliation against United States economic interests which would not be posed by a negotiated solution.

-- Enactment of the 200-mile bill would seriously undercut United States objectives in the Law of the Sea negotiations.

-- Enactment of the 200-mile bill could undermine the opportunity through the Law of the Sea Conference to develop universal fisheries conservation obligations. It is not enough that coastal fisheries juris-

diction be extended. Sound conservation also requires that coastal nations be subject to binding conservation obligations. Such obligations can only be achieved through multilateral agreement.

-- Enactment of the 200-mile fishing bill would violate solemn treaty obligations of the United States and constitute a serious setback to development of cooperation rather than conflict in the oceans. The bill would at least violate the fundamental 1958 Geneva Convention on the High Seas to which the U.S. is a party. The issue is so clear that Philip Jessup, formerly a judge of the International Court of Justice, has recently written: "I do not know of any responsible and qualified person who maintains that such a claim (unilateral 200-mile fisheries zone) would be in accordance with international law."

-- A unilateral extension of United States fisheries jurisdiction would seriously injure important United States tuna and distant water fishermen who fish within 200 miles of other nations. The value of tuna landings alone by U.S. fisheries off foreign shores exceeds $138 million per year. Such a unilateral extension could also endanger existing treaty

arrangements protecting our valuable salmon stocks (including the Atlantic salmon moratorium and the agreement with Japan covering our Pacific salmon) throughout their range beyond 200 miles.

Finally, Mr. Chairman, we note that S.961 is not a narrowly drawn conservation measure aimed solely at the prevention of depletion of stocks off the U.S. coasts and applying in a non-discriminatory way to both U.S. and foreign fishermen. Rather it is a sweeping measure aimed at broad extension of fisheries jurisdiction and preferential rights for U.S. fishermen. We believe such objectives, which we support, are best pursued through negotiations.

Mr. Chairman, in addition to indicating the reasons for strong opposition to S.961 it may be useful to analyze some of the arguments made by the proponents of the bill in support of such unilateral action.

(A) The 200-mile bill is needed as an emergency measure to protect coastal fish stocks against heavy foreign fishing.

It is true that many stocks off the United States coasts have been depleted by foreign overfishing during

the past 15 years. But the issue is not whether stocks have been depleted by past overfishing; rather it is whether under agreements presently in force and which can reasonably be anticipated there is an emergency situation threatening serious depletion of stocks until a Law of the Sea Treaty can be brought into force. On this point, there is a real question as to the extent of the threat to the stocks at levels of fishing permitted under agreements now in place. For example, under the latest ICNAF agreement, agreed quotas are at a level to provide for a recovery of the principal stocks in the important area from Maine through North Carolina.

We should keep in mind that a unilateral extension of jurisdiction would not provide added protection for our major fisheries within 12-miles or for continental shelf fishing resources, both of which are already under U.S. fisheries jurisdiction.

Most importantly, we expect to be able to continue to reduce foreign fishing through ongoing fishery negotiations. Such negotiations, in the present negotiating climate, are the best way to provide added protection quickly. Though problems

remain, recent bilateral and limited multilateral agreements have been much more effective in protecting stocks off the United States. Moreover, such an approach would not undercut our important interests in tuna, salmon, and coastal species caught within 200 miles of other nations.

(B) The Law of the Sea Conference is taking too long and we cannot wait.

We are not relying on a Law of the Sea Treaty to resolve our interim fisheries problems. Rather we have within the last year greatly intensified our efforts at bilateral and limited multilateral fishing agreements. In the two key negotiations, ICNAF and the 1974 Japanese agreement, we have had substantial success. We achieved a 23% reduction in ICNAF, and last year the Japanese agreed to more than a 25% decrease in their total catch.

The Law of the Sea Conference is, of course, taking time and is not moving as fast as we would like. It is not clear whether a treaty can be completed in 1976 although we will make every effort to do so. We are, however, engaged in the most complex and comprehensive multilateral negotiation ever undertaken. But despite the difficulties, substantial progress is being

made as evidenced by the production of a single negotiating text at the Geneva session of the Conference last spring and an emerging consensus on most major issues (including a 200-mile economic zone with protection for our coastal and salmon fishing interests). As long as substantial progress is being made, because of the importance of the issues at stake, including vital national security interests, we should strongly support the Conference. Most importantly, to make a major unilateral fisheries claim could undermine our ability to achieve international agreement in a Law of the Sea Treaty recognizing the very 200 mile fisheries jurisdiction which we seek.

(C) S.961 will strengthen the hands of our Law of the Sea negotiators.

Although the threat of passage of the 200-mile bill may strengthen the hands of our bilateral fisheries negotiators, the bill is seriously harmful to the broader Law of the Sea negotiations. The reasons why the bill undercuts rather than strengthens the hands of our Law of the Sea negotiators include:

-- we have said that we could recognize a 200-mile economic zone only if our vital interests were protected by a treaty. A

200-mile economic zone is one of the major objectives of many coastal States in the negotiations. For Congress to enact such a zone would give those States one of their principal objectives without our achieving vital objectives in return;

-- passage of the 200-mile bill even with a delayed effective date could encourage extremists to stall the negotiations and wait until United States action validates their long-standing claims;

-- if United States unilateral action encourages a wave of more extreme unilateral claims, the incentive for agreement may be removed and the Conference could collapse or be strung out indefinitely;

-- at the least, such unilateral claims could harden positions and make the negotiations more difficult.

(D) The United States has taken unilateral action before without harm to our interests.

In 1945 President Truman proclaimed United States jurisdiction over the resources of the continental shelf and in 1966 the United States extended its fisheries jurisdiction from 3 to 12 miles. More recently, in 1973 the United States declared the American lobster a "creature of the continental shelf" under the Continental Shelf Convention and thereby subject to United States jurisdiction. These unilateral United States oceans actions are fundamentally different from a unilateral extension of our fisheries jurisdiction to 200 miles. The differences include:

-- none was made during the course of a relevant multilateral Conference;

-- in the case of the extension of our fisheries jurisdiction to 12 miles, the Soviet Union recognized a 12-mile territorial sea at the time;

-- it was evident at the time that there would be few protests from the United States action and this was borne out in fact;

-- the latter two United States fisheries claims were of minor significance

compared to an extension of fisheries jurisdiction from 12 to 200 miles.

Moreover, even these more innocuous actions were not free from costs. Some states used the Truman Proclamation to justify 200-mile territorial sea claims. And the more recent claim to include lobster as a "creature of the continental shelf" has given rise to a fisheries dispute with the Bahamas in which Florida-based spiny lobster fishermen have been excluded from their traditional fishing in the Bahamas. It may be instructive to examine the balance sheet on this extension of jurisdiction with respect to the American lobster as a creature of the shelf. Gains in the United States lobster fishery as a result of the United States declaring lobster a creature of the shelf have been slight. But invocation of the same doctrine by the Bahamas has resulted in excluding U.S. fishermen from the Bahamas spiny lobster fishing at a substantial cost in financial and human terms.

Mr. Chairman, we must not and will not sacrifice the protection of fish stocks off our coasts. We are committed to a 200-mile economic zone as part of a comprehensive Law of the Sea Treaty and to the immediate negotiation of a transition to the 200-mile

zone. A unilateral extension of fisheries jurisdiction, however, would not be in the best interests of our fisheries or of the overall oceans and political interests of our nation.

From time to time there is an issue of transcendent importance for national policy and the direction of our foreign relations. This is such a time and such an issue. It is imperative that we join together in reaffirming cooperative solutions to our oceans problems.

Thank you, Mr. Chairman.